

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

James L. Casserly

Direct dial 202 661-8749
jlcasserly@mintz.com

202 434 7300

202 434 7400 *fax*

October 24, 2002

Ex Parte Notice

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Applications for Consent to the Transfer of Control of Licenses from
Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast
Corporation, Transferee, MB Docket No. 02-70**

Dear Ms. Dortch:

On October 23, 2002, representatives of AT&T Corp. ("AT&T") and Comcast Corporation ("Comcast") met with Stacy Robinson, Legal Advisor to Commissioner Abernathy, and separately with Commissioner Kevin Martin and his Legal Advisor, Catherine Bohigian. AT&T was represented by Mike Hammer and Betsy Brady, and Comcast was represented by Jim Coltharp and the undersigned. Steven Teplitz of AOL Time Warner also joined in the meeting with Commissioner Martin and Ms. Bohigian. The discussions centered on pending motions to require production, in this proceeding, of an ISP agreement that will enable AOL Time Warner to offer high-speed Internet service on AT&T Comcast's cable systems.

The AT&T and Comcast representatives mainly summarized the Applicants' Joint Opposition, filed September 13. In particular, they emphasized the following points:

- As the Commission has already decided in prior mergers, issues relating to agreements between cable operators and third-party ISPs are issues of general applicability and should be addressed in the rulemaking context, not as part of the merger review.
- AT&T and Comcast have already explained why there is no market failure that requires government intervention. Applicants have demonstrated, on the record, both that market forces will naturally lead AT&T Comcast to enter into third-party ISP deals and that the companies do not and will not restrict consumers' access to Internet content.
- It would be anomalous in the extreme to delay the merger just because Applicants have done what they said they would – and what multiple Commissioners have urged: enter into voluntary agreements with third-party ISPs. Both AT&T and Comcast have been

October 24, 2002

Page 2

moving down this path throughout the year, and the AOL deal – which will provide additional ISP choice to 10 million homes – merely continues this forward progress.

- The notion that there is some crucial relationship between the AOL ISP Agreement and the TWE Restructuring Agreement misses the point. Applicants have already solved any potential issues regarding AT&T's TWE interest through insulation, a disposition trust, and the continued application of the TWE Safeguards. The public interest groups have previously saluted the trust proposal as a "conscientious" proposal that "will promote the public interest." Applicants have never relied on the TWE Restructuring Agreement as part of their showing that the proposed Comcast/AT&T transaction is in the public interest. Indeed, there is no guarantee that TWE Restructuring will close as expected.
- The Commission has abundant reason to deny the Earthlink and consumer group motions on the basis of its prior decisions, established case law, and the documents that are already on the record in this proceeding. The Commission can readily deny the motions, and approve the merger, without relying on a review of the actual ISP agreement itself.

Pursuant to section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically with the Office of the Secretary. Copies of this letter are also being sent to Commissioner Martin, Ms. Bohigian, Ms. Robinson, and the merger review team. Please let me know if you have any questions.

Sincerely,

James L. Casserly

cc:	Commissioner Martin	Stacy Robinson	Catherine Bohigian
	Royce D. Sherlock	Roger D. Holberg	Erin Dozier
	Simon Wilkie	James R. Bird	William Dever
	Cynthia Bryant	Jeff Tobias	Patrick Webre
	Lauren Kravetz Patrich	Qualex International	